## SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE LICENSURE

PROCEEDINGS

RE: CHERIE KRACHT, LPN

License No. P010082 (SD) P59321 (IA)

Licensee.

AGREED UPON DISPOSITION
FOR CONDITIONAL ORDER OF
REINSTATEMENT WITH MANDATED
PARTICIPATION IN HEALTH
PROFESSIONALS ASSISTANCE
PROGRAM (HPAP), STAYED
SUSPENSION, AND WAIVER OF
HEARING

WHEREAS, Cherie Kracht ("Licensee"), was licensed to practice as a practical nurse in the State of South Dakota until that License (P010082) lapsed on April 20, 2015; and held a license in Iowa (P59321) until September 27, 2017, when the State of Iowa suspended that license due to Licensee fraudulently or inappropriately using or permitting the use of prescription blanks or obtaining prescription medications under false pretenses and violating the confidentiality or privacy rights of the patient or client;

WHEREAS, the Board received a request by Licensee for reinstatement of her South Dakota license;

WHEREAS, the Board, pursuant to SDCL § 36-9-57, in its discretion may grant a petition to reinstate Licensee's South Dakota license upon a showing of good cause;

WHEREAS, based on the information provided to the Board, the Board has determined that clear and convincing evidence exists showing Licensee's condition may interfere with her ability to practice nursing safely under SDCL § 36-9-49(4) and (6) without proper treatment and supervision or may result in unsafe nursing practices, substandard care, or unprofessional or dishonorable conduct under SDCL § 36-9-49 (10) without proper treatment and supervision. In addition, Licensee's physical or mental condition, specifically addiction to or prescription medications, may endanger the

health or safety of a person who is or will be entrusted to the Licensee's care under SDCL § 36-9-49.1 if not properly treated and monitored;

WHEREAS, the Board has a statutory obligation to protect the public health, safety and welfare set forth in SDCL § 36-9-1.1, including the protection of the public from unsafe nursing practices and practitioners;

WHEREAS, Licensee and the Board have agreed to resolve the request for reinstatement in the manner set forth in this agreed-upon disposition and waiver of hearing pursuant to ARSD 20:48:08:12(3);

WHEREAS, it is the intent of this agreement to provide for a resolution of the licensing issues presented by the Licensee's conduct, in a professional manner, without the necessity of further proceedings herein;

WHEREAS, Licensee hereby agrees she may only receive an Order of Reinstatement if she first obtains a letter of support for reinstatement from the South Dakota Health Professionals Program (HPAP).

WHEREAS, Licensee also agrees, upon receipt of such letter of support, that her
Reinstatement is contingent upon her being mandated into the Health Professionals Assistance
Program ("HPAP") with terms and conditions to be determined by HPAP;

WHEREAS, Licensee also hereby agrees to a Suspension of Licensee's South Dakota license, such Suspension to be stayed so long as Licensee is not unsuccessfully discharged by HPAP. If HPAP issues Licensee an unsuccessful discharge, Licensee's license is automatically and immediately suspended and the stay is lifted. When Licensee is successfully discharged from HPAP, the stayed suspension terminates;

WHEREAS, per the Nurse Licensure Compact Regulations, Licensee understands that one mandated into such a program as HPAP is granted a single-state license only;

WHEREAS, Licensee understands that a stayed suspension is reportable discipline which will be published in the Board's newsletter, posted on its website, and reported into the National Practitioner Data Bank (NPDB) as required by law. As the stayed suspension is reportable discipline, Licensee is required to provide an affirmative response to inquiries of disciplinary action on further renewals and other nursing related inquiries;

WHEREAS, Licensee understands that participation in HPAP is mandatory in order to maintain a single-state license in South Dakota. To meet the terms of this agreement, Licensee must be demonstrating active participation in HPAP within five (5) business days of Licensee signing this Agreed upon Disposition; and

WHEREAS, Licensee agrees and understands that any failure to comply with any aspect of the HPAP program and its contract, even noncompliance less than an unsuccessful discharge, will be reported to the Board for further action as deemed appropriate by the Board.

NOW, THEREFORE, it is hereby stipulated and agreed as follows:

- 1. The Board has jurisdiction over the person of the Licensee and the subject matter of this Order.
  - 2. The Board asserts and the Licensee admits to the facts stated herein.
- 3. Licensee recognizes that this matter is of a nature that would constitute grounds for discipline of Licensee's license to practice as a nurse in the State of South Dakota under SDCL § 36-9-49 and/or SDCL § 36-9-49.1, or denial of her request for reinstatement.
- 4. Licensee understands that Licensee has a right to a contested hearing case pursuant to SDCL Ch. 1-26 regarding this matter and that such rights under SDCL Ch. 1-26 include, but are not

limited to: a contested case hearing before the Board, to be present at the contested case hearing, to be represented by legal counsel, to introduce evidence and testimony on Licensee's behalf, to call witnesses, to cross-examine witnesses, to inspect all documentary evidence submitted to the Board, and to appeal the Board's decision to the South Dakota Circuit Court and Supreme Court, as provided by law.

- 5. By entering into this agreed-upon disposition with the Board, Licensee hereby knowingly and voluntarily waives the above rights and agrees that this matter will be resolved according to the procedures outlined in ARSD 20:48:08:12(3) by an agreed upon issuance of a Conditional Order of Reinstatement with Mandated Participation in Health Professionals Assistance Program (HPAP) and Stayed Suspension.
- 6. Licensee has been given the opportunity to discuss this agreed-upon disposition with an attorney of Licensee's choice and is aware of Licensee's rights as outlined above. Licensee voluntarily waives all such rights to a hearing, notice, appearance, or other rights. Licensee is entering into this agreed-upon disposition voluntarily and without duress or compulsion.
- 7. If Licensee violates any provision of Licensee's HPAP participation agreement,
  Licensee understands that the Board will be notified and the Licensee may be subject to discipline
  and reporting as determined by the Board.
- 8. If Licensee is unsuccessfully discharged from HPAP, Licensee's license will be immediately and automatically suspended, without the necessity of further notice, hearing, or findings and conclusions, such being waived through this Agreed Upon Disposition.

NOW, THEREFORE, the foregoing Agreed Upon Disposition for Conditional Order of Reinstatement with Mandated Participation in HPAP, Stayed Suspension and Waiver of Hearing is respectfully submitted to the Board with the request that the Board adopt its terms as an Order of the Board in the above matter.

Dated this  $\frac{10}{2}$  day of August, 2020.

Cherie Kracht, Licensee

## SOUTH DAKOTA BOARD OF NURSING

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IN THE MATTER OF THE LICENSURE

**PROCEEDINGS** 

RE: CHERIE KRACHT, LPN

License No. P010082 (SD) P59321 (IA) CONDITIONAL ORDER OF REINSTATMENT WITH MANDATED PARTICIPATION IN HEALTH PROFESSIONALS ASSISTANCE PROGRAM (HPAP) and STAYED SUSPENSION

Licensee.

IT IS HEREBY ORDERED that the South Dakota Board of Nursing accepts, adopts, and incorporates Licensee's Agreed Upon Disposition into this Conditional Order of Reinstatement with Mandated Participation in Health Professionals Assistance Program (HPAP) and Stayed Suspension by reference, the same as if all such terms were set forth herein.

IT IS HEREBY ORDERED that good cause exists to reinstate Licensee's South Dakota license to practice as a registered nurse in the State of South Dakota so long as Licensee first obtains a letter of support from HPAP and thereafter complies with mandated participation in HPAP, with a stayed suspension that is immediately lifted in the event of unsuccessful HPAP discharge.

IT IS HEREBY ORDERED that the Board hereby mandates Licensee's continued participation in the Health Professionals Assistance Program (HPAP).

IT IS HEREBY ORDERED that all terms and conditions, including but not limited to duration of Licensee's participation in HPAP, clearance to return to employment, and any restrictions or requirements shall be set by the HPAP, and Licensee shall fully comply with all of such terms and conditions.

IT IS HEREBY ORDERED that Licensee shall pay for all costs and expenses in carrying out the terms and conditions established by HPAP.

IT IS HEREBY ORDERED that, if the Licensee violates and terms of this reinstatement, the Licensee agrees that the Board may take such action against Licensee's license as the Board deems necessary, up to and including an immediate suspension, revocation, or other disciplinary action. If Licensee is unsuccessfully discharged by HPAP, this Order of Reinstatement shall be considered revoked and Licensee's license immediately and automatically suspended once again.

Dated this 24 day of September, 2020.

SOUTH DAKOTA BOARD OF NURSING

Executive Director